

B.3 Infringement

3.1 INFRINGEMENT GENERALLY

I will now instruct you how to decide whether or not [patent holder] has proven that [alleged infringer] has infringed the [] patent. Infringement is assessed on a claim-by-claim basis. Therefore, there may be infringement as to one claim but no infringement as to another.

In this case, there are five possible ways that a claim may be infringed. The five types of infringement are called: (1) direct infringement; (2) active inducement; (3) contributory infringement; (4) infringement through the supply of components from the United States to another country; and (5) infringement through importation of a product made abroad by a patented process. Active inducement and contributory infringement are referred to as indirect infringement. There cannot be indirect infringement without someone else engaging in direct infringement.

In this case, [patent holder] has alleged that [alleged infringer] directly infringes the [] patent. [[In addition,] [patent holder] has alleged that [alleged direct infringer] directly infringes the [] patent, and [alleged infringer] is liable for [actively inducing or contributing to] that direct infringement by [alleged direct infringer]. [Patent holder] has also alleged that [alleged infringer] is liable for [infringement through the supply of components from the United States for combination outside of the United States] [and/or] [infringement through importation into the United States of a product made by the patented process].]

In order to prove infringement, [patent holder] must prove that the requirements for one or more of these types of infringement are met by a preponderance of the evidence, that is, that it is more likely than not that all of the requirements of one or more of each of these types of infringement have been proved.

I will now explain each of these types of infringement in more detail.

Authorities

Warner-Lambert Co. v. Teva Pharms. USA, Inc., 418 F.3d 1326, 1341 n.15 (Fed. Cir. 2005) (infringement must be proven by a preponderance of the evidence); *Seal-Flex, Inc. v. Athletic Track & Court Constr.*, 172 F.3d 836, 842 (Fed. Cir. 1999) (a patentee must “prove that the accused product or process contains, either literally or under the doctrine of equivalents, every limitation of the properly construed claim”); *Morton Int’l, Inc. v. Cardinal Chem. Co.*, 5 F.3d 1464, 1468-69 (Fed. Cir. 1993) (upholding lower court’s finding of noninfringement based on plaintiff’s failure to prove that the accused product met all of the claimed requirements).